





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7

11201 Renner Boulevard  
Lenexa, Kansas 66219

MAY 31 2019

**MEMORANDUM**

**SUBJECT:** Status of Civil Litigation  
**FROM:** Jared Pessetto, ORC   
**THRU:** Bruce Morrison, LCARD/ROAG   
**TO:** File for R.V. Hopkins, Inc. (Quad City Drum Recycling Co., Inc.) Facility  
Docket No. VII-97-H-0011  
EPA ID # IAD022096028  
Davenport, Iowa

This memorandum has been prepared to document the termination of civil litigation initiated by the U.S. Environmental Protection Agency, Region 7, in the United States District Court for the Southern District of Iowa, styled as *United States of America v. R.V. Hopkins, Inc.*, Civil No. 3-99-CV-60005. On January 11, 1999, EPA filed a complaint against R.V. Hopkins, Inc., alleging violations of the Resource Conservation and Recovery Act, or RCRA. Ruling on EPA's Motion for Partial Summary Judgment on July 7, 2000, the court found in favor of EPA and against R.V. Hopkins on the issue of liability. By order dated November 3, 2000, the court required R.V. Hopkins to cease regulated activities; implement RCRA closure; provide proof of financial assurance; prepare and implement a corrective action plan; submit semiannual environmental audits of its business activities; and provide EPA access to the facility. As noted in the attached docket summary, the court's November 2000 order terminated litigation between the parties in Southern District of Iowa.

Attachments

1. Civil Docket for Case #: 3:99-cv-60005-TJS (S.D. Iowa).
2. Findings of Fact, Conclusions of Law and Judgment Entry, *U.S. v. R.V. Hopkins, Inc.* (S.D. Iowa Nov. 3, 2000).

RCRA



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**U.S. District Court  
Southern District of Iowa (Davenport)  
CIVIL DOCKET FOR CASE #: 3:99-cv-60005-TJS**

USA v. R V Hopkins Inc  
Assigned to: Magistrate Judge Thomas J. Shields  
Demand: \$0  
Cause: 42:6901 Environmental Cleanup Expenses

Date Filed: 01/11/1999  
Date Terminated: 11/03/2000  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: U.S. Government Plaintiff

**Plaintiff****USA**

represented by **Maureen McGuire**  
UNITED STATES ATTORNEY'S  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant****R V Hopkins Inc**

represented by **John T Flynn**  
BRUBAKER FLYNN & DARLAND  
201 West 2nd Street  
Suite 400  
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563-322-2681  
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**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
06/28/2002		REMARK Dft's trial exhibits disposed of by clerk after no response from Mr. Flynn (rmj) (Entered: 06/28/2002)
05/21/2002		REMARK Government's trial exhibits sent to Ms. McGuire per Clerk's UPS mail (rmj) (Entered: 05/21/2002)
11/03/2000	<u>35</u>	ORDER/FINDING OF FACTS, CONCLUSIONS OF LAW AND JUDGMENT ENTRY by Magistrate Judge Thomas J. Shields terminating case (cc: all counsel) (bp) (bp, ). (Entered: 11/09/2000)
10/17/2000	34	PROPOSED findings of fact, conclusions of law and order submitted by defendant R V Hopkins Inc [32-1] (bp) (Entered: 10/17/2000)
10/12/2000	33	PROPOSED finding of fact, conclusions of law and order submitted by plaintiff USA [32-1] (bp) (Entered: 10/16/2000)
09/22/2000	32	ORDER by Magistrate Judge Thomas J. Shields — parties to provide to Court their proposed findings of fact, conclusions of law and judgment entry, simultaneously, by 10/16/2000. (cc: all counsel) (ld) (Entered: 09/25/2000)
09/12/2000		EXHIBITS located in cabine. Deft's in a 3 ring binder and Plt's in an expandable folder. (don) (Entered: 09/12/2000)

09/12/2000	31	EXHIBIT LIST by defendant R V Hopkins Inc (don) (Entered: 09/12/2000)
09/12/2000	30	CLERK'S COURT MINUTES: courtroom clerk: Rita Johnson; court reporter: Linda Egber; 2nd day Bench Trial (don) (Entered: 09/12/2000)
09/11/2000	29	WITNESS AND EXHIBIT LIST by defendant R V Hopkins Inc (don) (Entered: 09/12/2000)
09/11/2000	28	WITNESS AND EXHIBIT LIST by plaintiff USA (don) (Entered: 09/12/2000)
09/11/2000	27	CLERK'S COURT MINUTES: courtroom clerk: Rita Johnson; court reporter: Linda Egbers; 1st day day of Bench Trial (don) (Entered: 09/12/2000)
08/28/2000	26	CONSENT TO PROCEED BEFORE U.S. MAGISTRATE AND ORDER OF REFERENCE By order of Honorable Charles R. Wolle to Magistrate Judge Thomas J. Shields for all further proceedings (cc: counsel) REFERRING to Magistrate Judge Thomas J. Shields the Motion to Extend Time to File Resistance to Motion for Summary Judgment before Magistrate Judge Celeste F. Bremer [16-2], REFERRING to Magistrate Judge Thomas J. Shields the Motion for Partial Summary Judgment before Honorable Charles R. Wolle [12-1] Trial of 09-11-00 terminated. (lh) (Entered: 09/01/2000)
08/14/2000	25	ORDER on Final Pretrial Conference by Magistrate Judge Thomas J. Shields pretrial conference held on 08-14-00; appearing for Pltf was AUSA Maureen McGuire and for Deft RVHopkins were James Bentley and Deft's atty John Flynn; non-jury case [2 days]; trial scheduled for 2-wk period commencing 09-11-00. Parties actively engaged in settlement negotiations and undersigned has offered to assist the parties if necessary. (cc: all counsel) (lh) (Entered: 08/15/2000)
08/11/2000	24	Pre-trial BRIEF FILED by Pltf USA (lh) (Entered: 08/15/2000)
08/11/2000	23	PROPOSED final pretrial order submitted by plaintiff USA, defendant R V Hopkins Inc (rmj) (Entered: 08/11/2000)
07/20/2000	22	ORDER by Honorable Charles R. Wolle motion for partial summary judgment [12-1] ; CANCEL hearing to be held 10:00 7/21/00 (cc: all counsel) (bl) (Entered: 07/20/2000)
07/17/2000	21	ORDER by Honorable Charles R. Wolle hearing on amount of judgment/Motion for Partial Summary Judgment [12-1] hearing set for 10:00 AM on 7/21/00 at USCrtHse, Davenport, IA (cc: all counsel) (lh) (Entered: 07/18/2000)
07/07/2000	20	ORDER by Honorable Charles R. Wolle re [19-1] Stipulation and Consent to Entry of Partial Summary Judgment – the Crt orders that summary judgment on the issue of liability is entered for the United States and against the defendant R.V. Hopkins, Inc. The United States is entitled to appropriate relief pursuant to 42 USC Section 6928(a)(1) and (h). The specific terms of the relief will be determined by the Crt after an opportunity for a hearing. (cc: all counsel) (lh) (Entered: 07/10/2000)
07/07/2000	19	STIPULATION and consent by all parties [12-1] re motion for partial summary judgment before Honorable Charles R. Wolle (bl) (Entered: 07/10/2000)
06/22/2000	17	ORDER by Honorable Charles R. Wolle granting motion to continue; hearing scheduled for 6/29/00 continued without date [16-1] (cc: all counsel) (bl) (Entered: 06/22/2000)
06/21/2000	18	RESPONSE of no objection by plaintiff USA [16-2] re: motion for continuance and to extend time to file resistance to motion for summary judgment before Magistrate Judge Celeste F. Bremer (bl) (Entered: 06/22/2000)
06/15/2000	16	MOTION by defendant R V Hopkins Inc to continue , – and to extend time to file resistance to motion for summary judgment before Magistrate Judge Celeste F. Bremer (bl) (Entered: 06/15/2000)
06/14/2000	15	ORDER by Honorable Charles R. Wolle Pltf's Motion for Partial Summary Judgment [12-1] phone conf call hearing set for 2:00 PM on 6/29/00; phone conf call placed by CRT to counsel (cc: all counsel) (lh) (Entered: 06/14/2000)

06/02/2000	14	STATEMENT of material facts to which there is no genuine issue to be tried by plaintiff USA [12-1] in support of motion for partial summary judgment before Honorable Charles R. Wolle (bl) (Entered: 06/06/2000)
06/02/2000	13	MEMORANDUM by plaintiff USA in support [12-1] of motion for partial summary judgment before Honorable Charles R. Wolle (bl) (Entered: 06/06/2000)
06/02/2000	12	MOTION by plaintiff USA for partial summary judgment before Honorable Charles R. Wolle (bl) (Entered: 06/06/2000)
04/25/2000	11	ORDER by Magistrate Judge Thomas J. Shields granting motion to amend scheduling order and discovery plan to extend time in which to submit, not serve dispositive motions until 6/2/00; No other deadlines will be amended [10-1] (cc: all counsel) (bl) (Entered: 04/26/2000)
04/20/2000	10	MOTION by plaintiff USA to amend scheduling order and discovery plan to extend time in which to submit dispositive motions until 6/2/00 before Magistrate Judge Thomas J. Shields (bl) (Entered: 04/24/2000)
02/03/2000	9	DESIGNATION of expert witnesses by defendant R V Hopkins Inc (ld) (Entered: 02/04/2000)
12/22/1999	8	ORDER by Magistrate Judge Thomas J. Shields; Dates of Scheduling order and discovery plan amended as follows: ; Discovery ddl 4/3/00 ; Deadline for supplemental discovery responses 5/2/00; Dispositive Motion ddl set for 5/2/00; Plus expert witnesses would be designated by 1/31/00; Dfts expert witnesses would be designated 5/2/00 (cc: all counsel) (bl) (Entered: 12/22/1999)
12/15/1999	7	SUPPLEMENT by plaintiff USA [6-1] to amend request amend scheduling order and discovery plan before Magistrate Judge Thomas J. Shields (bl) (Entered: 12/20/1999)
12/13/1999	6	MOTION by plaintiff USA to amend scheduling order and discovery plan before Magistrate Judge Thomas J. Shields (bl) (Entered: 12/16/1999)
08/02/1999	5	ORDER by Honorable Charles R. Wolle ; Trial 9/11/00 ; SATISFIED Case ready for trial 8/2/00 ; Final pretrial cnf (MAG) 8/14/00 by TJS (cc: all counsel) (bl) (Entered: 08/03/1999)
05/28/1999	4	SCHEDULING REPORT AND ORDER/SCHEDULING ORDER by Magistrate Judge Thomas J. Shields : ; Discovery ddl set for 3/3/00 ; dispositive mtn ddl set 4/4/00 Case ready for trial as of 8/3/00 ; estimated length of trial - 10-15 days (cc: all counsel) (bl) (Entered: 05/28/1999)
03/22/1999	3	ANSWER by defendant R V Hopkins Inc complaint [1-1] (dd) (Entered: 03/23/1999)
02/23/1999	2	WAIVER OF SERVICE of summons and complaint, upon defendant R V Hopkins Inc on 1/21/99 (dd) Modified on 02/25/1999 (Entered: 02/25/1999)
01/11/1999	1	COMPLAINT (Summons(es) issued) ; Rule 16 Dismissal Notice set for 5/11/99 ; Dismissal ddl (service) set for 5/11/99 (lh) (Entered: 01/12/1999)



**UNITED STATES DISTRICT COURT  
IN AND FOR THE SOUTHERN DISTRICT OF IOWA  
DAVENPORT DIVISION**

FILED  
DAVENPORT, IOWA  
NOV 3 PM 3:24  
CLERK OF DISTRICT COURT  
U.S. DISTRICT COURT  
DAVENPORT, IOWA

UNITED STATES OF AMERICA,	)	
	)	CIVIL NO. 3-99-CV-60005
Plaintiff,	)	
	)	
vs.	)	
	)	<b>FINDINGS OF FACT, CONCLUSIONS</b>
R.V. HOPKINS, INCORPORATED,	)	<b>OF LAW AND JUDGMENT ENTRY</b>
	)	
Defendant.	)	

Trial in this matter was held on September 11 and September 12, 2000.

Appearing on behalf of plaintiff was Assistant United States Attorney Maureen McGuire; appearing on behalf of defendant was one of its attorneys, John T. Flynn.

Plaintiff dismissed with prejudice Counts V and VI of the Complaint at the start of trial.

Plaintiff's Exhibits 1 through 11 were admitted by stipulation; defendant's Exhibits A through H were admitted by stipulation. Plaintiff also offered Exhibits 12 and 13, both of which were admitted without objection.

At trial, plaintiff called three witnesses: Lynn Slugantz, an environmental engineer for the United States Environmental Protection Agency; Brian Mitchell, an environmental engineer for the United States Environmental Protection Agency; and Ken Herstowski, an environmental engineer for the United States Environmental Protection Agency.

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COPIES TO COUNSEL  
MAILED ON 11-3-00  
BY R. Johnson

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Defendant called three witnesses on its behalf: Morris Preston, a privately retained environmental consultant; James Bentley, defendant's plant manager; and James Matthys, president of the Buffalo Savings Bank.

Plaintiff commenced this action on January 11, 1999 (Clerk's No. 1), seeking injunctive relief, pursuant to 42 U.S.C. §§ 6928 and 6973, for violations of 42 U.S.C. § 6901 et seq. Partial summary judgment was entered on July 7, 2000, pursuant to stipulation between the parties that defendant was in violation of the Resource Conservation and Recovery Act (RCRA; 42 U.S.C. § 6901 et seq.), and that forming the basis for that violation was a release of hazardous waste, primarily lead, from defendant's facility into the environment.

Notwithstanding the filing of this suit in 1999, this case actually has its antecedents probably since defendant began operation in southwest Davenport, Iowa in 1964. At that time, and to the present, defendant has been in the business of cleaning and reconditioning industrial drums for resale and reuse. In connection with that operation, defendant cleans, tightens, removes dents, makes repairs and tests the drums for leaks.

It is likely that from 1964 until 1999, defendant either released toxic materials into the environment, especially and primarily lead, or stored such toxic materials on site. All of this was in violation of the RCRA.

The toxic wastes were produced as part of defendant's operation in cleaning out the drums. Some of the drums had to be emptied of liquid content, other drums had to be heat-treated, so that chemicals remaining in the barrels could be cleaned which produced an ash residue, which was also toxic.

Notwithstanding the filing of this lawsuit in January of 1999, plaintiff has been aware of the problems for nearly 20 years, during which plaintiff issued two administrative orders and two substantial danger orders. Even though the parties agreed that defendant would cease and desist hazardous operations, it did not. Likewise, even though plaintiff was aware of this ongoing situation, and conducted inspections, it responded minimally to force defendant to cease release of the toxic materials into the environment, and to begin cleaning up the site until this suit was filed.

The parties do agree that now, and for approximately the last year, defendant is neither releasing toxic materials into the environment, nor storing those materials on site. In fact, there is little now about which the parties disagree, other than specific terms of an injunction that both parties agree is appropriate, and the amount of time that defendant should be allowed in which to completely cover the site to prevent further release of the lead contamination.

At the close of evidence, the Court ordered the parties to submit, separately, proposed findings of fact, conclusions of law and judgment entry by October 16, 2000. Plaintiff filed its proposed findings on October 12, 2000 (Clerk's No. 33). Defendant submitted its Findings of Fact, Conclusions of Law and Order on October 17, 2000 (Clerk's No. 34). The Court has reviewed those proposals, and incorporates below, in both the findings of fact and conclusions of law and judgment entry, portions of plaintiff's and defendant's proposals.

#### **FINDINGS OF FACT**

1. The defendant, R.V. Hopkins, Inc., operates a used drum reconditioning facility located in Davenport, Iowa. R.V. Hopkins, Inc. has been in business at this location since at least 1964. R.V. Hopkins, Inc. cleans, tightens, removes dents, leak tests, paints and markets the reconditioned drums to industrial users.

2. The used drums accepted for service by R.V. Hopkins, Inc. contain various industrial wastes and byproducts, including solvents, paints and inks. Over the years, incoming drums have contained hazardous wastes. As a result of the reconditioning process, R.V. Hopkins, Inc. generated, accumulated and stored hazardous waste. Although required to by RCRA, R.V. Hopkins, Inc. never obtained a permit for the storage, treatment or disposal of hazardous waste.



3. There have been numerous RCRA Compliance Evaluation Inspections of the R.V. Hopkins, Inc. facility from 1983 through 1996. Each of these inspections found that R.V. Hopkins, Inc. was in violation of RCRA regulations in connection with its operations.

4. The RCRA Compliance Evaluation Inspections found numerous repeat violations. These violations include the accumulation and storage of drums of burner ash and "baghouse dust," both containing hazardous waste. Many of the drums had been on site for more than 90 days, and many for more than one year. Some of the drums were not closed, were leaking, were severely corroded, and were not properly labeled or dated. Waste piles, containing hazardous waste, were found outside and uncovered.

5. Over the years, EPA has taken various administrative enforcement actions against R.V. Hopkins, Inc. as a result of the RCRA violations, in an attempt to obtain compliance with the requirements. These enforcement actions included the following: an Administrative Consent Agreement and Consent Order in 1983; an Administrative Consent Agreement and Consent Order and the imposition of a fine in December 1987; a Unilateral Administrative Order issued in January 1994; and a Unilateral Administrative Order issued in September 1997, which included findings

by EPA that conditions at the site posed an imminent and substantial endangerment to human health and the environment.

6. R.V. Hopkins, Inc. either failed to comply with the Orders and Agreements or partially complied in an untimely manner.

7. Lead, primarily, is one of the elements found in the hazardous waste generated and stored by R.V. Hopkins, Inc. Soil throughout the facility has been found to be contaminated with a variety of hazardous substances. Lead contamination in the soil is as high as 60,000 milligrams per kilogram and, in an industrial setting, levels over 1,000 milligrams per kilogram are unacceptable. Groundwater at the facility is also contaminated with a variety of hazardous substances including lead.

8. Lead is a probable human carcinogen. Lead can be toxic to humans and animals via ingestion and inhalation. Exposure to lead in sufficient quantities may cause premature births, reproductive system damage, kidney damage, increased blood pressure, and decreased mental ability.

9. In August, 1999, EPA conducted an inspection of the R.V. Hopkins, Inc. site. During this inspection, EPA found, at that time, R.V. Hopkins, Inc. was no longer generating hazardous waste and that most of the drums containing

hazardous waste had been shipped off-site. There is no evidence that, at the present time, R.V. Hopkins, Inc. is generating or storing hazardous waste.

10. R.V. Hopkins, Inc. submitted a closure plan to EPA which was approved in 1988 but was never implemented. Because of continued hazardous waste management at additional areas in the facility since 1988, that closure plan is no longer appropriate.

11. The EPA has prepared a proposed closure plan that includes two alternative plans. (Government's Trial Exhibit #1). The first alternative plan provides for "clean closure" of the hazardous waste management units and precludes the necessity of any post-closure care. The estimated cost of this plan is \$1.5 million.

The second alternative plan provides for closing the hazardous waste management units by consolidation of contaminated soils and capping the site. The second alternative would require the need for extended post-closure care. The estimated cost of this plan is \$581,000. Both plans call for the completion of the closure activities within six (6) months.

12. In August, 2000, R.V. Hopkins, Inc. prepared a proposed closure plan that provides for a combination of establishing a permanent vegetative cover over part of the site and paving the remainder of the site. (Defendant's Trial Exhibit #E). The closure activities would be completed in six (6) years and would require

extended post-closure care. The estimated cost for this plan is \$272,937. The remediation activities described in the closure plan are acceptable to EPA, although the six (6) year time frame for completion is not acceptable to EPA.

13. R.V. Hopkins, Inc. has been a customer of the Buffalo Savings Bank, Buffalo, IA since 1975. The president of the bank is aware of the financial condition of R.V. Hopkins, Inc. both present and past. The bank has indicated that it would assist R.V. Hopkins, Inc. in obtaining a loan for the amount of money necessary to implement R.V. Hopkins, Inc.'s proposed closure plan. The bank also indicated that it would agree to complete any closure activities under the closure plan should R.V. Hopkins, Inc. fail to do so.

14. Hazardous waste has been released into the environment as a result of R.V. Hopkins, Inc.'s business operations.

15. R.V. Hopkins, Inc. has corrected its business practices as follows:

- (a) To minimize the generation of waste. This includes refusing to accept drums which have contained pesticides or herbicides.
- (b) To test waste to determine if it is hazardous or non-hazardous.
- (c) To ship any waste identified as hazardous within ninety (90) days of generation or accumulation of said waste.



16. R.V. Hopkins, Inc. submitted its proposed closure plan to the EPA on August 11, 2000. (Defendant's Exhibit "E"). The closure plan submitted by Morris Preston was acceptable to the EPA, subject to its public review process. The Court finds that this closure plan meets the requirements for closure as required by 40 C.F.R., part 264, subparts G and H, and 40 C.F.R., §§ 264.258 and 264.310.

17. The RCRA inspection report for the August, 1999 EPA inspection indicates that R.V. Hopkins, Inc. is at the present time not generating any hazardous waste or improperly storing hazardous waste at its site. Defendant also presented evidence regarding its plan to obtain clean closure of the southern portion of the site identified as the warehouse site and to comply with the 1988 closure plan with regard to this portion of the site. R.V. Hopkins, Inc., through the testimony of Morris Preston, indicated that, in addition to the August 11, 2000 closure plan, it will submit a post-closure plan and a corrective action plan within the timetables allowed by the Court.

18. The EPA's testimony at trial was that R.V. Hopkins, Inc. at the present time is not generating hazardous waste or storing hazardous waste.

### **CONCLUSIONS OF LAW**

1. The Resource Conservation and Recovery Act (RCRA) was passed in 1976 to regulate the generation, transportation, treatment, storage and

disposal of hazardous waste. 42 U.S.C. § 6901, et seq. This Act was an attempt to address the problems that occurred by the general disposal of waste and the particular problems resulting from the disposal of hazardous waste. RCRA “provides what Congress has called a ‘prospective cradle-to-grave regulatory regime governing the movement of hazardous waste in our society’.” United States v. Aceto Agriculture Chemicals, Inc., 872 F.2d 1373, 1376 (8<sup>th</sup> Cor. 1989).

2. This present action was brought pursuant to 42 U.S.C. § 6928(a)(1) which provides that when EPA has determined that “any person has violated or is in violation of any requirement of this subchapter, the Administrator may ... commence a civil action in the United States district court ... for appropriate relief, including a temporary or permanent injunction.” Similarly, under 42 U.S.C. § 6928(h), the United States may bring an action in district court when “there is or has been a release of hazardous waste into the environment from a facility” to obtain appropriate relief, including injunctive relief. There is no dispute that the defendant has violated RCRA requirements and continues to be in violation of RCRA requirements. There is also no dispute that there has been a release of hazardous waste into the environment. The United States is entitled to injunctive relief.

3. The issuance of an injunction to compel compliance with the applicable RCRA statutes and regulations is appropriate. The enforcement provision

of RCRA, 42 U.S.C. § 6928, “explicitly calls for the judicial issuance of injunctions to coerce compliance with the Act’s requirements.” Environmental Defense Fund, Inc., et al. v. Lamphier, 714 F.2d 331, 338 (4<sup>th</sup> Cir. 1983). The traditional test of balancing equities before issuing injunctive relief are not applicable in these cases. “If the purpose of the legislation is thwarted by failure to comply, and the legislation specifically authorizes injunctive relief, no finding of irreparable injury or balancing of the equities need be made.” United States v. Production Plated Plastics, Inc., 762 F.Supp. 722, 729 (W.D. Mich. 1991).

4. The RCRA regulations require that hazardous waste treatment, storage and disposal facilities must submit written closure plans to EPA for approval and implement the approved plans. 40 C.F.R. § 265, subpart G. Although R.V. Hopkins, Inc. did submit a closure plan to EPA which was approved in 1988, R.V. Hopkins, Inc. never implemented the plan. That plan is no longer appropriate. R.V. Hopkins, Inc. is not in compliance with this requirement.

5. The issuance of an injunction to require R.V. Hopkins, Inc. to submit and implement an approved closure plan is appropriate and warranted in this case. “[O]nce liability has been established ... an injunction ordering compliance with RCRA’s closure requirements must be granted.” United States v. Production Plated Plastics, Inc., 762 F.Supp. 722, 729 (W.D. Mich. 1991).

6. The RCRA regulations require that hazardous waste treatment, storage and disposal facilities must establish an estimate of the costs of closure and post-closure and demonstrate financial assurance for that amount. 40 C.F.R. § 265, subpart H. This requirement is necessary to assure that there will be sufficient funds to pay for closure should the owner be unable or unwilling to do the closure work. R.V. Hopkins, Inc. is not in compliance with this requirement.

7. The requirement of demonstrating financial assurance can be met in any one of four ways: (1) the facility can establish a closure trust fund; (2) obtain a surety bond; (3) obtain an irrevocable standby letter of credit; or (4) obtain closure insurance. 40 C.F.R. §§ 265.143(a) (d). It is not clear from the testimony of Buffalo Savings Bank whether their proposal complies with these requirements.

8. The issuance of an injunction to require R.V. Hopkins, Inc. to demonstrate financial assurance as provided for in the regulations is appropriate and warranted in this case. See United States v. Power Engineering Co., 191 F.3d 1224, 1232-34 (10<sup>th</sup> Cir. 1999) in which the district court properly issued an injunction requiring the company to provide financial assurance for closure and post-closure costs.

9. Pursuant to 42 U.S.C. § 6928(h), when there has been a release of hazardous waste into the environment, the United States is entitled to injunctive



relief. In this case, there is no dispute that R.V. Hopkins, Inc. has caused a release of hazardous waste into the environment. As a result, R.V. Hopkins, Inc. can be required to undertake corrective action. See, United States v. Indiana Woodtreating Corp., 686 F.Supp. 218, 223 (S.D. Ind. 1988).

10. The issuance of an injunction requiring defendant to prepare, submit and implement a corrective action plan is appropriate and warranted in this case. Defendant must undertake corrective action to determine the extent of the lead and other contaminants in the soil and groundwater and, if required, take any necessary action to remediate them.

11. There has been a lengthy history of acts and omissions on the part of both plaintiff, through the Environmental Protection Agency, and defendant, which has resulted in a situation tantamount to benign neglect. Administrative orders were agreed upon, but never followed. A closure plan was agreed upon, but never implemented or enforced. Ongoing pollution occurred over a number of years, even after the Environmental Protection Agency was aware of the situation, and yet no remedial or corrective actions were compelled by the plaintiff until the filing of this lawsuit.

12. Plaintiff and defendant agree that an injunction is appropriate, and that remedial and corrective action pursuant to RCRA regulation, and pursuant to a proper closure plan is required.

13. Both plaintiff and defendant have submitted closure plans, which are essentially similar, but which differ in details and in the time limit for implementation.

14. Implementation of plaintiff's closure plan upon the schedule proposed would likely be impossible for defendant to complete financially, and would jeopardize completion of the project at all. A business failure by defendant would likely result in any remedial and corrective actions being undertaken at taxpayer expense, which would then leave plaintiff with property that would have questionable market value and/or market uses, even if the remedial and corrective procedures are properly performed.

15. Because of the amount of time that plaintiff allowed to elapse between first identifying the hazardous conditions of this property, and its final decision to seek Court intervention, substantial additional release of toxic contaminants was permitted. As a result, a quick and speedy implementation of the closure plan and post-closure monitoring would appear to be appropriate, except for the fact that the evidence indicates that the primary concern now is to cover the site

with appropriate materials so as to prevent further exposure, and to limit runoff. The fact that plaintiff did not feel a compelling need to order this remediation and implementation of a corrective closure plan much earlier, convinces the Court that allowing defendant a reasonable time in which to implement the closure plan is fair and appropriate.

16. As proposed by plaintiff, the Court finds, based upon the evidence, that defendant would not be able to financially bear the cost of the implementation of any closure plan on such an abbreviated schedule.

#### **JUDGMENT ENTRY**

IT IS SO ORDERED that a permanent injunction be issued requiring defendant R.V. Hopkins, Inc. to comply with the following:

1. R.V. Hopkins, Inc. shall perform the following actions to (a) implement RCRA closure at the facility for all hazardous waste management units, after the opportunity for public comment in accord with 40 C.F.R. part 264, subparts G and H, and 40 C.F. R. §§ 264.258 and .310; (b) perform post-closure care for the units at the facility; and (c) provide financial assurance that the work will be completed.

A. (i) R.V. Hopkins, Inc. shall, within 30 days of the entry of this Order, submit to EPA for review and approval, a closure plan that meets the

requirements for closure as required by 40 C.F.R., part 264, subparts G and H and 40 C.F.R. §§ 264.258 and 264.310. The closure plans proposed by EPA in Government's Exhibit #1, or the closure plan proposed by R.V. Hopkins, Inc. in Defendant's Exhibit #E, may be submitted.

(ii) All closure activities shall be completed no later than four (4) years from the date of EPA's notice of approval of the closure plan.

(iii) Pursuant to 40 C.F.R. § 264.113, if the closure plan submitted by R.V. Hopkins, Inc. will take longer than two years to complete, R.V. Hopkins, Inc. must demonstrate to the EPA that it has taken and will take all steps to prevent threats to human health and the environment, including compliance with RCRA. This information must be submitted with the proposed closure plan.

(iv) During the time that R.V. Hopkins, Inc. is completing closure, it shall certify to EPA every six (6) months that the work scheduled to be completed in accord with the approved closure plan has been completed and the steps taken to prevent threats to human health and the environment. The certification shall be in writing and submitted to EPA on or before the fifteenth (15) of January and the fifteenth (15) of July of each year until closure is complete. The first certification shall be due on July 15, 2001.

B. Within ninety (90) days of entry of this Order, R.V. Hopkins, Inc. shall submit to EPA, for review and approval, a post-closure plan that meets the requirements for post-closure found in 40 C.F.R., part 264, subparts F, G and H and 40 C.F.R. §§ 264.258 and 264.310. Upon completion of closure activities, R.V. Hopkins, Inc. shall begin post-closure care of the facility in accordance with the approved plan and continue that care for a minimum of thirty (30) years.

C. Within thirty (30) days of entry of this Order, R.V. Hopkins, Inc. shall submit to EPA proof of financial assurance for closure that meets the requirements of 40 C.F.R., part 264, subpart H. R.V. Hopkins, Inc. shall maintain financial assurance in compliance with this requirement until closure is completed and approved by EPA and financial assurance for post-closure care has been established as set forth in the following paragraph, D.

D. Within sixty (60) days of submission to EPA of defendant's certifications that it has completed closure, as required by 40 C.F.R. §§ 264.115 and 116, R.V. Hopkins, Inc. shall submit to EPA proof of financial assurance for post-closure care that meets the requirements of 40 C.F.R., part H. R.V. Hopkins, Inc. shall maintain financial assurance in compliance with this requirement until EPA determines that post-closure is completed.

2. Defendant R.V. Hopkins, Inc. shall prepare and implement a corrective action plan to investigate the extent of releases of hazardous constituents at and from the facility and perform appropriate corrective actions to protect human health and the environment from such releases.

A. Within ninety (90) days of entry of this Order R.V. Hopkins, Inc. shall submit a corrective action work plan to EPA for review and approval. The work plan shall describe all activities in detail and a proposed schedule for timely implementation and shall be prepared in accordance with directions to be issued by EPA.

B. Within thirty (30) days of completion of the work plan, R.V. Hopkins, Inc. shall submit a report to EPA documenting the work conducted and the findings. Upon receipt of the report, EPA will review the findings and will determine whether corrective actions are required.

(i) If corrective actions are required, R.V. Hopkins, Inc. shall conduct a study to evaluate possible corrective measures to address the release of hazardous constituents. This study shall be conducted in accordance with directions to be given by EPA.

(ii) If corrective actions are required, R.V. Hopkins, Inc. shall demonstrate financial assurance for performance of corrective measures.

3. Defendant R.V. Hopkins, Inc. shall submit a semiannual environmental audit of its business activities at the facility as follows:

A. R.V. Hopkins, Inc. shall submit certifications to EPA that it is in compliance with all requirements for generators of hazardous wastes under RCRA, 42 U.S.C. § 6901, et seq., and all applicable regulations. The semiannual audits shall specifically include an evaluation of all solid waste streams generated from drum recycling operations and shall include sampling as necessary to ensure that waste streams have been characterized appropriately as hazardous wastes or non hazardous wastes.

B. The audits shall be conducted for a period of five (5) years, and shall be due in EPA on or before April 15 and October 15 each year for the previous six-month period. The first report shall be due on April 15, 2001, for the six-month period ending March 31, 2001.

C. The audit reports shall be certified by an environmental professional whose qualifications shall be submitted to EPA for review and approval prior to the submission of the report.

4. Defendant R.V. Hopkins, Inc. shall not conduct any activities that require a permit under RCRA, 42 U.S.C. §6901, et seq. and applicable regulations,



including the treatment, storage or disposal of hazardous wastes at the facility without first obtaining a permit for such activities.

5. Defendant R.V. Hopkins, Inc. shall not conduct any activities that violate the standards applicable to generators of hazardous waste and the regulations promulgated thereunder at 40 C.F.R. § 261.5 and 40 C.F.R., part 262.

6. R.V. Hopkins, Inc. shall provide the United States, its agencies, employees and authorized agents, access at all reasonable times to the site for the purposes of conducting any activity related to the work required to be performed under this Order including, but not limited to: (i) verifying any data or information submitted to EPA; (ii) obtaining samples relating to the activities required under this Order, (iii) inspecting and copying records, operating logs, contracts or other documents maintained and generated by the defendant; and (iv) assessing defendant's compliance with this Order.

7. Should defendant fail to comply with the terms of this Order, the United States may bring action in this Court to find defendant in contempt. The Court shall impose such sanctions as deemed appropriate.

8. Should defendant fail to comply with Paragraph 1(A) and (B) by failing to submit an approved closure and post-closure plan; Paragraph 1(C) by failing to submit proof of financial assurance; Paragraph 2 by failing to submit a

corrective action work plan; Paragraph 4 by conducting activities that require a permit without having first obtained a permit; or Paragraph 5 by conducting activities that violate the standards for generators of hazardous waste, the Court may require that defendant terminate business operations until defendant has demonstrated to the Court that it is in compliance with this Order.

IT IS SO ORDERED.

Signed this 3 day of November, 2000.



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THOMAS J. SHIELDS  
UNITED STATES MAGISTRATE JUDGE

## ROUTING AND TRANSMITTAL SLIP

Date

05/31/2019

TO: (Name, office symbol, room number,  
building, Agency/Post)

1. Pessetto, ORC

Initials

Date

JP

5/31/19

2. Morrison, LCARD/ROAG

BM

6/4/19

3. Hoefer, ORC

D.H.

6/4/19

4. Lininger, LCARD/ROAG

DL

6/5/19

5.

Action	File	Note and Return
<input checked="" type="checkbox"/> Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	<input checked="" type="checkbox"/> Signature
Coordination	Justify	

REMARKS

Memorandum to file documenting termination of litigation between EPA Region 7 and R.V. Hopkins, Inc. concerning RCRA violations at Defendant's facility located in Davenport, Iowa.

DO NOT use this form as a RECORD of approvals, concurrences, disposals,  
clearances, and similar actions

FROM: (Name, organization symbol, Agency/Post)

Pessetto

Room Number - Building  
2.4-N52Phone Number  
7793